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In re Application of:
OGLIVY, Ian, Charles :
U.S. Application No.: 10/585,134 :
PCT No.: PCT/AU01/00435 :
International Filing Date: 17 April 2001 :
Priority Date: 17 April 2000 :
Attorney's Docket No.: CRD-0005 :
For: COMMUNICATIONS DEVICE WITH
CARD FACILITY :

DECISION ON PETITION FOR
REVIVAL OF ABANDONED
APPLICATION UNDER
37 CFR 1.137(b)

This decision is issued in response to applicant's Petition for Revival under 37 CFR 1.137(b), filed 29 June 2006.

BACKGROUND

On 17 April 2001, applicant filed international application PCT/AU01/00435. The international application claimed a priority date of 17 April 2000, and it designated the United States. On 25 October 2001, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for filing the basic national fee in the United States was thirty months from the priority date, i.e., 17 October 2002.

Applicant did not file timely materials to enter the national stage in the United States. Accordingly, this application became abandoned with respect to the United States at midnight on 17 October 2002.

On 29 June 2006, applicant filed the Petition for Revival under 37 CFR 1.137(b) considered herein.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Here, the petition is accompanied by "required reply" in the form of payment of the small entity basic national fee for national stage entry of PCT/AU01/00435. Item (1) is therefore satisfied.

Applicant has also submitted payment of the small entity petition fee, satisfying item (2).

With respect to item (3), the Petition for Revival includes an express statement that the "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." This application has been abandoned for an extended period of time. The USPTO is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. At 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the USPTO). Based on the above, item (3) above is considered satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application.

Based on the above, applicant has satisfied all the requirements for a grantable petition under 37 CFR 1.137(b).

CONCLUSION

The Petition For Revival under 37 CFR 1.137(b) filed 29 June 2006 is **GRANTED**.

The application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date.



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